IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.201 OF 2005

Ramchandra Narayan Walunj ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr.Jayesh Kocheta for Applicant.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent No.1.

Mr.D.N.Salvi for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 1, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. This is second application for bail preferred by the Applicant. The first contention is that the main reason for which his earlier application has been rejected is that the Applicant

was previously involved in a case under N.D.P.S., wherein, he was on bail and he misused the liberty granted to him. It is submitted that now the Applicant has been acquitted in respect of the said offence, and this is a changed circumstance. In the first place, on reading the decision dated 5th April 2004 which runs into about eight pages, this is not the only reason, which weighed with Sister Justice V.K.Tahilramani in rejecting the first Bail Application of the Applicant. It is observed in the said order that there is evidence to show that the Applicant had originally purchased 25 kgs of ganja and transacted with the said ganja, out of which, 12.5 kgs of ganja was found in his residential house. In other words, the ganja recovered at the instance of the Applicant and the ganja in respect of which, the Applicant is found to have transacted, is commercial quantity. It is further observed that even though the Applicant was arraigned as accused in the previous case for offence under N.D.P.S. Act and while he was on bail, the present offence has been committed. In my opinion, even if the Applicant has been acquitted in the previous offence, the ground that

he committed the present offence while on bail, is not effaced. Besides, there is substance in the argument of the learned Public Prosecutor that the acquittal in the previous case is not a clean chit to the applicant, but because of benefit of doubt. In any case, merely because the Applicant has been acquitted in the previous case, can be no ground to straightaway release the Applicant on bail, having regard to the seriousness of the offence and his antecedents, as it is matter of record that he has been dealing in ganja at lease since 1990.

3. It is then contended that there is another reason why the Applicant should be enlarged on bail. According to the Applicant, presently, the post of Special Judge to try offences under N.D.P.S. Act is lying vacant and it has been observed in the past that the post is not filled in, for six months or more at a stretch. It is argued that there is no likelihood of trial being concluded in near future and as the Applicant has already remained in jail for three years, this is a fit case where the Court should release the Applicant on bail. Even this submission does not

commend to me. Indeed, the Applicant may be right in contending that he is in jail for over three years. But that makes no difference, having regard to the seriousness of the offence and the antecedents of the Applicant.

4. The grievance that presently, the post of Special Court is lying vacant, also does not impress me because in all probability, the post will be filled up very soon. Grievance was made that it has been the practice that the post is kept vacant continuously for six months or more at a stretch. To examine this plea, report was called from the concerned Authorities. The report is submitted for period from April 1993 onwards. On perusing the said report, it is seen that the grievance of the Applicant is not entirely correct. Indeed, the post is vacant since October 2004 but that does not mean that it will be kept vacant for ever. Sooner or later, the post will be filled up by the concerned authorities. The only indulgence that can be shown to the Applicant is to direct the Trial Court to take his case as High Court Expedited Case, as soon as the vacancy is filled up

and to dispose of the same finally, not later than six months from the date, the vacancy is filled up.

5. Both the Applicant as well as the Respondent will bring this position to the notice of the concerned Judge immediately after the vacancy is filled up, so as to ensure that reasonable time is available to the concerned Judge for the disposal of the case. Application is disposed of accordingly.

6. Copy of this order be forwarded to the Registrar General forthwith, who, in turn, may impress upon the concerned to fill up the vacancy of Special Court of N.D.P.S., Pune at the earliest. Needless to observe that because of the nature of offence, no bail can be granted to the accused on account of the legal position as it obtains. In that case, it is but necessary that a forum for quick disposal of such cases is continually available. I deem it necessary to make this observation as the report indicates that in the past, the post was vacant during the following

period:

1/2/1994 to 5/5/1994; 9/8/1994 to 24/8/1994; 12/11/1994 to 20/6/1995; 1/6/1997 to 12/11/1997; 13/5/1999 to 8/7/1999; 5/6/2001 to 29/8/2001 and since 30/10/2004 till date. Suffice it to observe that the dates referred to therein are quite eloquent.

A.M.KHANWILKAR, J.